

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LANTZ E. ARNELL,

Plaintiff,

CASE NO. 08cv441-LAB (RBB)

ORDER GRANTING DEFENDANT McADAM'S MOTION TO DISMISS

JACK LIEB, ESQ. & ASSOCIATES,
JUDGE WILLIAM McADAM, ET AL.

Defendants.

17 Defendant McAdam, a state court judge, has moved to dismiss with prejudice
18 Plaintiff's claims against him, citing multiple defenses. The other named Defendant has
19 already been dismissed without prejudice pursuant to Fed. R. Civ. P. 4(m). Plaintiff
20 discusses many other wrongdoers whose identities he does not know, but he has not named
21 them as Defendants.

I. Background

23 Plaintiff previously filed a complaint against Judge McAdam in case number 07cv743-
24 LAB, but withdrew it, claiming he feared for his life when his mother was nearly killed in a
25 staged car accident. Plaintiff's earlier case was based primarily on a neighborhood
26 altercation. Plaintiff argued an elderly man had stabbed him with a long metal sword as part
27 of some kind of conspiracy to assault or murder him. Plaintiff had, however, pleaded guilty
28 to one count of battery and Judge McAdam denied his petition for writ of coram nobis. (Def.'s

1 Mot. to Dismiss, Exs. A and B (records from *People v. Lantz Arnell*, case no. S188356).)
2 Furthermore, the elderly man he pleaded guilty to assaulting prevailed in a civil suit against
3 him, after the Court struck Arnell's answer. (Def.'s Mot. to Dismiss, Ex. C (record from
4 *Lawrence v. Arnell*, case no. GIS20077).)

5 Plaintiff now alleges Defendants are part of a vast criminal enterprise which he dubs
6 the Continuing Criminal Enterprise ("CCE"), whose activities include, but are not limited to:
7 murder, murder for hire, arson, identity theft, computer hacking, wire fraud, white slavery,
8 kidnaping, staged traffic accidents, jury tampering, election fraud, intimidation at polling
9 places, corruption of public officials, financing of street gangs, insurance fraud, and
10 perpetuation of religious intolerance. (Complaint at 3:13–28.) Plaintiff asks the Court to
11 order an investigation into the CCE and its activities.

12 With regard to McAdam specifically, however, the complaint brings two groups of
13 claims against him. First, the complaint alleges McAdam participated in the CCE's
14 conspiracy in several discrete ways. Second, it alleges he committed wrongs against
15 Plaintiff by denying his writ of coram nobis and otherwise committing injustices from the
16 bench.

17 **II. Legal Standards**

18 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of the
19 pleadings. *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). In ruling on a motion to
20 dismiss, the Court accepts all allegations of material fact as true and construes the pleadings
21 in the light most favorable to the nonmoving party. *Williams ex rel. Tabiu v. Gerber Products*
22 Co., 523 F.3d 934, 938 (9th Cir. 2008) (citation omitted). The Court does not assume the
23 truth of legal conclusions merely because they are cast in the form of factual allegations.
24 *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). Nor will the Court supply
25 essential elements of the claim that were not initially pled. *Ivey v. Bd. of Regents of*
26 *University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Vague and conclusory allegations
27 of official participation in civil rights violations are insufficient to withstand a motion to
28 dismiss. *Id.*

1 The Court is obliged to examine its own jurisdiction, *sua sponte* if necessary. *B.C.*
 2 *v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999).

3 **III. Discussion**

4 Defendant McAdam has raised the defenses of judicial immunity, the *Heck v.*
 5 *Humphrey* doctrine, Eleventh Amendment immunity, and sovereign immunity. He contends
 6 the complaint should be summarily dismissed as abusive, and because Plaintiff has engaged
 7 in judge-shopping. He argues Plaintiff cannot state a claim for conspiracy. He also argues
 8 abstention is appropriate, although, as discussed below, this is in fact a jurisdictional
 9 argument based on the *Rooker-Feldman* doctrine.

10 Plaintiff charges Lieb and the CCE generally with a great deal of wrongdoing, but his
 11 allegations against McAdam specifically are more limited. Plaintiff says McAdam caused
 12 him only two injuries as a result of McAdam's alleged participation in the CCE.

13 First, he says McAdam followed the CCE's orders to deny his writ of coram nobis.
 14 (Comp. at 10:22–27.) The complaint alleges the conspirators forced McAdam to do this, just
 15 as they force him to continue to commit criminal acts from the bench. (*Id.*) Plaintiff's theory
 16 is that this makes McAdam an "accessory to the attempted murder." (*Id.*) Elsewhere he
 17 says Defendant Lieb bribed McAdam to deny the writ. (*Id.* at 5:6–8.) Plaintiff makes other
 18 general allegations that McAdam used his judicial position for racketeering purposes,
 19 contending that McAdam and Lieb together "use actors, make-up artists, identity theft,
 20 staged auto accidents, violence, the threat of violence and murder on an unprecedented
 21 scale." (Compl., 4:9–11; see also *id.* at 4:21–28,, 5:18–25 (making similar charges).)
 22 Because Plaintiff has described these acts throughout his pleadings as having taken place
 23 in connection with his criminal prosecution and civil litigation,¹ it is apparent he is claiming
 24 McAdam committed acts of injustice in his judicial capacity by ruling against him.

25
 26 ¹ See, e.g., Compl. at 5:28–6:8 (describing purported attempt on Plaintiff's life by an
 27 elderly man armed with a "sword"), 8:1–4 (charging Lieb with having "paid an actress and
 28 make-up artist" to impersonate an eyewitness at his civil trial); 8:11–20 (charging Lieb and
 the elderly man with using false identification and committing identity fraud); 4:15–20
 (alleging his mother was the target of a staged automobile accident aimed at preventing him
 from litigating his previous case in federal court).

1 Second, Plaintiff says McAdam interfered with his business, costing him \$100,000 in
2 legal expenses. (Compl. at 8:22–9:17.) He alleges McAdam, together with Lieb, paid con
3 artists to harass him and somehow interfere with his telephone communications. (Compl.
4 at 9:3–7.) He also alleges McAdam helped Lieb place a lien on his property. (*Id.* at
5 9:14–15.) These actions, however, were also allegedly done in connection with the state
6 court litigation; apparently what Plaintiff is referring to is attorneys' fees in connection with
7 the state court action, service of process, discovery and enforcement of judgment.

8 The complaint is disordered and its logic is difficult to follow at times. Much of it is
9 obviously predicated on Plaintiff's belief that in various settings, unnamed people are
10 listening in on his phone calls, staring at him, following him, watching him, and plotting
11 against him. No reason is given for the conspiracy's having targeted him as opposed to
12 some other person. He believes it is this extensive conspiracy that is responsible for his
13 medical consulting business dropping off, and for judicial rulings adverse to him.

14 Giving the complaint a fair and liberal reading, it is apparent Plaintiff is charging
15 McAdam with making corrupt judicial rulings against him. Plaintiff interprets this as
16 McAdam's attempt to protect and help Lieb as well as the CCE in their scheme to destroy
17 him. McAdam's role, in other words, is allegedly to be the corrupt judge who helps the CCE
18 escape justice. (Compl., 7:6–9 (“The CCE brought in McAdam to protect Lieb and [the
19 elderly man] under color of right”), 7:15–16 (describing McAdam's and Lieb's alleged
20 concerted work to obstruct justice), 10:21–27 (describing McAdam's task in the CCE as
21 denying the writ of coram nobis and committing “more illegal acts from the bench”); 11:3–11
22 (alleging Lieb and McAdam protect CCE members accused of murder and staged
23 automobile accidents). Others, unknown to Plaintiff, direct the CCE. (Mot. for Disc. Conf.
24 (Docket no. 30), 2:16–17.)

25 Defendant McAdam's request for judicial notice of state court records (Docket no. 5-3)
26 is **GRANTED**. *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d
27 244, 248 (9th Cir. 1992); Fed. R. Evid. 201.

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1 **A. Rooker-Feldman Doctrine**

2 The Court must consider jurisdictional issues first, before proceeding to other
 3 defenses. *Philips v. Bowles*, 2008 WL 205479, slip op. (9th Cir. Jan. 24, 2008) (citing
 4 *Elwood v. Drescher*, 456 F.3d 943, 948 (9th Cir. 2006)). The Court therefore first turns to
 5 the *Rooker-Feldman* doctrine, which is jurisdictional.² *Noel v. Hall*, 341 F.3d 1148, 1154-55
 6 (9th Cir. 2003). The *Rooker-Feldman* doctrine prevents the Court from considering *de facto*
 7 appeals from state-court judgments rendered before this action commenced. *Exxon Mobil*
 8 *Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

9 In his prayer for relief, Plaintiff requests all criminal charges and convictions against
 10 him be dismissed and the civil case likewise be dismissed.³ (Compl. at 9:20-24.) To the
 11 extent Plaintiff argues he was harmed by Judge McAdam's allegedly incorrect rulings or any
 12 other rulings by state courts, including the state court's improper assignment of McAdam to
 13 the case or McAdam's failure to recuse, *Rooker-Feldman* prevents this Court from
 14 considering his claims. *Bianchi v. Rylaarsdam*, 334 F.3d 895, 901-02 (9th Cir. 2003).

15 *Rooker-Feldman* does not bar suits for alleged fraud on the court by adverse parties.
 16 *Kougasian v. TMSL, Inc. et al.*, 359 F.3d 1136, 1140-41 (9th Cir. 2004). Therefore, *Rooker-*
 17 *Feldman* does not bar claims for extrinsic fraud against Defendant Lieb, but it does not follow
 18 he may bring the same claims against Judge McAdam. The Court may consider Plaintiff's
 19 claims only if they are not "inextricably intertwined" with the question of whether the state
 20 ///

21 ² The rule announced in *Humphrey v. Heck*, 512 U.S. 477, 486-87 (1994) prevents
 22 42 U.S.C. § 1983 plaintiffs from bringing suits that would imply the invalidity of their
 23 underlying conviction. Although Plaintiff did not cite § 1983 as a basis for his claims, the
 24 Court construes *pro se* pleadings liberally. The Ninth Circuit has not expressly ruled whether
 25 the *Heck* bar is jurisdictional, although the Circuit appears to hold the view it is not. *Guerrero*
 26 *v. Gates*, 442 F.3d 697, 704 (9th Cir. 2006) (quoting *Heck*, 512 U.S. at 484, for the principle
 27 that "termination of the prior criminal proceeding in favor of the accused' is a necessary
 element for a successful § 1983 malicious prosecution claim"). Other circuits hold it is not
 jurisdictional. See, e.g., *Okoro v. Bohman*, 164 F.3d 1059, 1061 ("[T]he *Heck* defense is not
 jurisdictional.") (citations omitted) and *Beck v. City of Muskogee Police Dept.*, 195 F.3d 553,
 557 (10th Cir. 1999) (holding *Heck* bar delays accrual of a cause of action until the
 conviction or sentence has been invalidated).

28 ³ Because judgment in both cases is now final, apparently Plaintiff seeks vacatur
 rather than dismissal.

1 court decisions were legally erroneous. *Ignacio v. Judges of U.S. Court of Appeals for Ninth*
 2 *Circuit*, 453 F.3d 1160, 1166 (9th Cir.2006) (citing *Noel*, 341 F.3d at 1157).

3 *Rooker-Feldman* bars Plaintiff from seeking vacatur of the state court judgments.
 4 *Bianchi*, 334 F.3d at 900 n.4 (“*Rooker-Feldman* bars federal adjudication of any suit in which
 5 a plaintiff alleges an injury based on a state court judgment and seeks relief from that
 6 judgment . . .”) *Rooker-Feldman* also bars suits seeking relief on the theory that state court
 7 judgments were improper or unconstitutional. *Id.* at 901.

8 To the extent Plaintiff is seeking damages because the state court judgment was
 9 wrong — which the complaint does not make clear — *Rooker-Feldman* likewise bars the
 10 claims. *Fontana Empire Center, LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 1992)
 11 (citing *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring)). He
 12 may also be attempting to reverse the judgment against him in the civil action, by measuring
 13 his damages in part by the state court’s award; this is likewise barred. *Id.* (citing *Charchenko*
 14 *v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995)). This is not to say, however, *Rooker-*
 15 *Feldman* necessarily bars claims for nominal damages, which may be available to vindicate
 16 deprivation of procedural due process rights even in the absence of actual damage. *Carey*
 17 *v. Piphus*, 435 U.S. 247, 266 (1978) (holding that nominal damages are available to
 18 vindicate deprivations of certain procedural due process rights, even in the absence of actual
 19 injury).

20 *Rooker-Feldman* thus largely, but not completely, deprives the Court of jurisdiction
 21 over claims arising out of state court judgments.

22 **B. Standing**

23 Although Defendant McAdam has not raised this issue, Article III standing is a
 24 jurisdictional matter and the Court must therefore raise this issue *sua sponte*.

25 Besides McAdam’s allegedly erroneous rulings, Plaintiff has alleged Defendants
 26 belonged to the CCE and that the CCE’s members committed a string of varied crimes and
 27 wrongdoing beginning in Chicago in 1969.

28 / / /

With regard to most of the crimes, Plaintiff has pleaded no facts showing who, if anyone, suffered any injury in fact sufficient to support standing. See *Moke v. United States*, 235 Fed.Appx. 681, 682 (9th Cir. 2007) (citing *Arakaki v. Lingle*, 477 F.3d 1048, 1059 (9th Cir. 2007)) (explaining that standing requires an injury in fact). The pleadings make clear this lengthy crime spree had no direct effect on Plaintiff at all. Rather, Plaintiff alleges, Defendants Lieb⁴ and McAdam “pose a threat to the judiciary of the state of California and a clear and present danger to the security of [t]he United States of America.” (Compl. at 13:18–21.) To the extent Plaintiff is attempting to litigate the rights of others, he lacks prudential standing. *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 917 (9th Cir. 2004) (“As a prudential matter, even when a plaintiff has Article III standing, we ordinarily do not allow third parties to litigate on the basis of the rights of others.”)

While Plaintiff has alleged more extensive involvement by Lieb, the only harm he says McAdam’s actions caused him arose out of McAdam’s actions taken in his judicial capacity.

Ordinarily, the Court would at this point order Plaintiff to show cause why his conspiracy claims should not be dismissed for failure to invoke the Court’s jurisdiction, and, if appropriate, he would be given leave to amend his complaint. Such an order might well separate out the allegations individually, explaining why Plaintiff might or might not have standing to raise each claim. Because, however, it is clear the complaint cannot be saved by amendment, Plaintiff will not be given leave to amend.

C. Mootness

A claim is moot when the Court lacks the power to grant the relief requested. *Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991). The Court lacks jurisdiction to decide moot claims. *DeFunis v. Odegaard*, 416 U.S. 312, 316 (1974) (holding federal courts lack power to decide moot questions).

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⁴ The caption names “Jack Lieb Esq. & Ass.” [sic], and defines “Lieb” as Jack Lieb & Associates, a law firm in which Jack Lieb and R. Fahey practice. (Compl., ¶ 2.) Throughout the remainder of the Complaint, however, the allegations refer to “Lieb” as an individual, apparently meaning Jack Lieb. This order uses the designation “Lieb” for this Defendant.

1 In large part, this action appears to be driven by Plaintiff's belief that the CCE needs
2 to be investigated and prosecuted and the erroneous idea that a civil action is the proper
3 way to accomplish this. In his prayer for relief, Plaintiff asks the Court to order "Full [f]ederal
4 investigation of the CCE" and "Investigation into the death of Abigail Dickson and
5 disappearance of key witnesses." (Compl., 10:4–6.) Plaintiff completely mistakes the role
6 of federal courts. No party to this case has the ability or authority to conduct criminal
7 investigations, so there is no one the Court could require to investigate these matters. See
8 *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 112 (1969) (explaining that
9 court may only enjoin parties or non-parties with notice who are shown to be in active
10 participation with defendants). Furthermore, decisions regarding whether criminal
11 investigation is merited are the within the power of the executive branch, not the judiciary.
12 *Heckler v. Chaney*, 470 U.S. 821, 832 (1985).

13 To the extent Plaintiff seeks an investigation of the CCE or any other alleged criminal
14 matter, this Court lacks the power to grant him the relief he requests, and such claims are
15 moot.

16 **D. Judicial Immunity**

17 Although not clearly stated, in light of all the pleadings it is apparent Plaintiff is
18 attacking his state criminal and civil judgments. To some extent his claims are barred by
19 *Rooker-Feldman*, as discussed above.

20 Plaintiff's claims against McAdam arise from actions taken in his judicial capacity.
21 Judges are "are not liable to civil actions for their judicial acts, even when such acts are in
22 excess of their jurisdiction, and are alleged to have been done maliciously or corruptly."
23 *Stump v. Sparkman*, 435 U.S. 349, 355–56 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335,
24 347 (1871)). Assuming all Plaintiff's contentions about Lieb and the CCE having bribed or
25 otherwise influenced Judge McAdam to make corrupt and unjust rulings were true, McAdam
26 would be entitled to judicial immunity even though Lieb would not. *Dennis v. Sparks*, 449
27 U.S. 24, 28–29 (1980).

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1 **E. Other Defenses**

2 The previous rulings dispose of all Plaintiff's claims, so the Court need not analyze
3 other defenses such as the *Heck* bar in any detail. For purposes of considering whether
4 Plaintiff's complaint could be saved by amendment, however, the Court notes *Heck* bars
5 claims that would impugn the validity of his conviction in state court. *Smith v. City of Hemet*,
6 394 F.3d 689, 696 (9th Cir. 2005).

7 **F. Abuse of Judicial Process**

8 In his previous case, *Arnell v. McAdam*, 07cv743-LAB (RBB), Plaintiff was ordered
9 to pay \$3500 in monetary sanctions, which he did. On August 9, 2007 he withdrew his
10 complaint voluntarily, claiming he needed to investigate Judge McAdam's corrupt activities
11 further, and also claiming he was intimidated after his mother was nearly killed in a staged
12 automobile accident. Eight months later, on March 10, 2008, Plaintiff filed an expanded but
13 little more coherent complaint in this case without informing the Court of the earlier case.
14 Indeed, in this complaint, Plaintiff misdescribes the earlier case as having ended with a
15 default, claiming "The federal court ruled that McAdam failed to answer the complaint."
16 (Compl. at 4:12–20.) Although the details make clear Plaintiff is referring to *Arnell v.*
17 *McAdam*, the false detail of the case's disposition is misleading, suggesting that Plaintiff
18 prevailed against McAdam earlier. The complaint in this case does not provide the number,
19 caption, or any other clear identifying information from the previous case.

20 In the earlier case, Plaintiff successfully sought the voluntary recusal of two district
21 court judges assigned to the case, though the recusals were not for the reasons Plaintiff
22 represented. See *Arnell v. McAdam*, 2007 WL 2021826, slip op. at *2 (S.D.Cal., July 10,
23 2007). Plaintiff then filed three successive motions for Judge Burns' recusal, and after these
24 failed and he was ordered to appear at a hearing to show cause why he should not be
25 sanctioned, he withdrew his complaint. During the course of the proceedings, two of
26 Plaintiff's abusive filings were stricken and Plaintiff was ultimately sanctioned. McAdam's
27 motion to dismiss was denied as moot after Plaintiff voluntarily withdrew his complaint; the
28 Court had no reason to find him in default.

1 After Plaintiff filed his complaint in the case at bar, Judge McAdam filed a notice of
2 related case as required under Civil Local Rule 40.1(e) correctly pointing out the new
3 complaint arose from the same events and involved the same parties and issues as the old.
4 Plaintiff then, without leave, filed a reply to the notice of related case in which he claimed the
5 notice of related case was unnecessary because he had already notified the court (Reply
6 to Notice of Related case at 2:6–7.) He then denied the cases were closely related, alleging
7 the case was almost entirely different from the previous one and he was not attempting to
8 relitigate the old one. (*Id.* at 2:22–28, 3:19.) He then stated he did not want Judge Burns
9 assigned to the case (*id.* at 3:1–9, 3:21–22), and accused McAdam of judge-shopping. (*Id.*
10 at 3:15, 3:27.)

11 In spite of Plaintiff's efforts, a notice of related case was prepared and this case was
12 transferred, pursuant to Civil Local Rule 40.1(h), to Judge Burns.

13 Plaintiff has never adequately explained why he was too fearful of the CCE to
14 maintain his claims in the previous action but months later filed a new complaint directly
15 attacking it. Plaintiff repeatedly attempted to veto the assignment of district court judges,
16 then by withdrew and refiled his claims. This, coupled with what was apparently an attempt
17 to disguise the case he had brought earlier, and his admitted intention of having some judge
18 other than Judge Burns assigned to this case all strongly suggest he was seeking to choose
19 a judge of his liking who was unfamiliar with his earlier filings.

20 In reply to the motion to dismiss, Plaintiff only briefly argues against dismissal for
21 judge-shopping:

22 The allegation of “judge shopping” cannot apply to this case and was not
23 raised in the previous case. Resurrection of the previous case for that
purpose is forbidden by *Lipman v. Dye* [294 F.3d 17 (1st Cir. 2002)].
24 (Am. Opp'n to Mot. to Dismiss at 3:19–21.) The argument that McAdam should have raised
25 the issue of judge-shopping before it was apparent is illogical, and the citation is inapposite.
26 This fails to rebut McAdam's charge.

27 Judge-shopping is an abuse of the judicial process and is therefore sanctionable
28 behavior. *Hernandez v. City of El Monte*, 138 F.3d 393, 398–99 (9th Cir. 1998) (citing *Oliva*

1 *v. Sullivan*, 958 F.2d 272, 273 (9th Cir. 1992), *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45
2 (1991)) (“Judge-shopping clearly constitutes ‘conduct which abuses the judicial process.’”).
3 The Court finds Plaintiff has engaged in judge-shopping and in these two cases the result
4 has been considerable waste of judicial resources.

5 Plaintiff has also aggressively sought pointless and burdensome discovery against
6 parties and non-parties. As discussed in the Court’s order to show cause why Defendant
7 Lieb should not be dismissed, issued August 22, 2008, Plaintiff failed to serve this Lieb with
8 process. His sole attempt at service occurred after someone identifying himself as Lieb
9 called Plaintiff and offered to appear at a bank to accept service. Plaintiff claims the man
10 who appeared was not Jack Lieb but rather someone who had stolen Jack Lieb’s identity.
11 He fruitlessly spent weeks trying to persuade bank officers to turn over surveillance tape so
12 the FBI could investigate the alleged identity theft. He then twice sought an order requiring
13 the bank to turn over its surveillance tape, which Magistrate Judge Ruben Brooks twice
14 denied. As Judge Brooks’ order of denial explained, this was irrelevant to the case and
15 would not assist Plaintiff in serving Lieb with process.

16 Since that time, Plaintiff has filed a motion for a discovery conference (Docket no. 30),
17 currently on calendar before Judge Brooks for hearing on September 29. The wide-ranging
18 discovery he seeks is essentially equivalent to a full-scale investigation of the alleged CCE,
19 which he now alleges is a trans-national organization threatening the security of the United
20 States. The motion shows he does not know who is leading or involved in the alleged CCE,
21 nor does he know the identity of any victims. The motion makes clear Plaintiff intends to
22 obtain a vast amount of information from McAdam. Although Plaintiff and McAdam’s
23 counsel have spoken over the phone, Plaintiff has repeatedly insisted on personally meeting
24 with her, which she has refused to do. (Exhibits 1 and 2 in Supp. of Pl.’s Mot. for Disc.
25 Conf.)

26 Plaintiff’s pleadings in this case and the previous one have also been inconsistent in
27 numerous key points, without explanation, and his allegations are increasingly fantastic. His
28 earlier complaint, for example, mentioned conspiracy, but focused on a neighborhood

1 dispute involving the owner or former owner of the neighboring house and her husband or
 2 fiancé. Neither of their identities was seriously disputed, although Plaintiff suspected the
 3 husband inaccurately identified himself and his address. The current complaint is now
 4 alleging the neighboring property owner and her husband were actually other people: a
 5 cunningly made-up actress allegedly impersonated the property owner on the witness stand,
 6 and the husband was merely the persona of a CCE operative sent to assassinate Plaintiff.

7 The Court's order dismissing Defendant Lieb (Docket no. 34) notes other
 8 inconsistencies. Furthermore, the trend is not, as it is in most cases, to winnow out the chaff
 9 and abandon weak and flawed arguments. Rather, the allegations and legal theories grow
 10 more quixotic with each iteration.

11 G. Leave to Amend

12 If there were any reason to think Plaintiff might be able to amend his complaint to
 13 state a claim, the Court would ordinarily give him an opportunity to do so. See *Weilberg v.*
 14 *Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007) (citation omitted).

15 Here, however, Plaintiff has filed two complaints bringing essentially the same claims
 16 against Defendant McAdam. Furthermore, his complaint, as before, is fanciful and
 17 inconsistent within itself and with other pleadings, and it is clear he cannot cure its
 18 deficiencies by amendment.

19 But finally, it is apparent Plaintiff has abused the judicial process by engaging in
 20 judge-shopping and filing misleading pleadings to cover this up. Defendant McAdam raised
 21 this by motion, Plaintiff has had an opportunity to respond, and the Court finds his response
 22 inadequate. Permitting this litigation to continue in some mutated form after amendment
 23 would needlessly and unfairly burden Defendants.

24 IV. Conclusion and Order

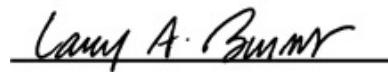
25 For these reasons, Plaintiff's claims against Defendant McAdam are **DISMISSED** and
 26 the complaint is **DISMISSED WITHOUT LEAVE TO AMEND**. All pending dates in this
 27 matter are **VACATED AS MOOT** and all pending motions are **DENIED AS MOOT**. Except
 28 for pleadings specifically provided for under the Federal Rules of Civil Procedure or Federal

1 Rules of Appellate Procedure, or other applicable law, Plaintiff shall file no more documents
2 in this case.

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4 **IT IS SO ORDERED.**

5 DATED: September 8, 2008

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7 **HONORABLE LARRY ALAN BURNS**
8 United States District Judge

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